



RECEIVED

IN THE UNITED STATES DISTRICT COURT

APR 5 2001

FOR THE DISTRICT OF ARIZONA

ATTORNEY GENERAL'S OFFICE
EDUCATION AND HEALTH SECTION

JOSEPH DUNAJSKI, by and through his father
and sole legal guardian, JAMES DUNAJSKI;
JOSHUA BURRIS, by and through his
surrogate parent, DOUG BACON; JUSTIN
SIMONS, by and through his parent and sole
legal guardian, SHEILA ACRES; SHANNIDIN
BEGAY, by and through his parent and legal
guardian TERRELL PIECHOWSKI; JOSHUA
KLUSOVSKY; THE ARC OF ARIZONA; and
THE LEARNING DISABILITIES
ASSOCIATION OF ARIZONA, on behalf of
themselves and all others similarly situated,

Plaintiffs,

v.

LISA GRAHAM KEEGAN, Superintendent of
Public Instruction, in her official capacity; the
STATE OF ARIZONA; and the ARIZONA
DEPARTMENT OF EDUCATION,

Defendants.

No. CIV 99-0353 PCT RCB

CONSENT DECREE

21 This Consent Decree is entered into by and between the Class Plaintiffs and the Defendants
22 Superintendent of Public Instruction Lisa Graham Keegan, the State of Arizona, and the Arizona
23 Department of Education in resolution of the matter styled as *Joseph Dunajski, et al. v. Lisa Graham*
24 *Keegan, the State of Arizona, and the Arizona Department of Education*, CIV 99-0353 PCT RCB.

25 A. Background

26 1. This Action was initiated by a Complaint filed under the Individuals with Disabilities
27 Education Act ("IDEA"), Section 504 of the Rehabilitation Act ("Section 504"), and Title II of the
28 Americans with Disabilities Act ("ADA") by the representative plaintiffs on February 24, 1999

45

1 against the Defendants Superintendent of Public Instruction Lisa Graham Keegan, the State of
2 Arizona, and the Arizona Department of Education (collectively "the Defendants").

3 2. As a condition of receipt of federal dollars under the Individuals with Disabilities
4 Education Act, the Defendants are required to adopt complaint resolution procedures to resolve any
5 written complaint filed by an organization or individual alleging that a public agency violated a
6 requirement of the Individuals with Disabilities Education Act or its implementing regulations.

7 3. The parties stipulated that all of the prerequisites for class certification were met. By
8 Order dated April 28, 1999, the Court thereafter certified the class to include:

9 All school-aged students with known or suspected disabilities who reside in Arizona,
10 their parents, guardians and/or representatives in the special education process, who
11 have submitted or are entitled to submit complaints to the Arizona Department of
12 Education or who will be entitled to do so in the future.

13 4. It is the mutual intention of the parties to settle and resolve all of class members'
14 claims against the Defendants. It is in the best interests of Class Plaintiffs and Defendants that this
15 matter be settled without further litigation and in accordance with the terms set out herein.

16 **B. Remedial Action**

17 5. In order to meet their obligations, the Defendants will modify their "complaint
18 resolution procedures" policies and procedures. The revised policies and procedures are attached
19 to the Consent Decree as Exhibit A.

20 **C. Monitor**

21 6. The parties shall agree to a qualified individual who shall monitor the Defendants'
22 performance of its obligations pursuant to this Decree. The Monitor shall have the authority to
23 ensure compliance with the complaint resolution procedures and the obligations outlined in this
24 Consent Decree. The parties have mutually selected Dr. David Rostetter to serve as the Monitor in
25 this Action.

26 7. The Arizona Department of Education staff will make available to the Monitor, Class
27 Members' school records, as well as documents maintained by the Arizona Department of
28 Education's Exceptional Student Services Division ("ESS"), including the Department's policies,

1 procedures, monitoring and investigative files, budgets, materials, and other documents that are
2 relevant to, or necessary for, the performance of the Monitor's duties.

3 8. During his term pursuant to this Consent Decree, the Monitor shall review and
4 approve any and all proposed modifications to Exhibit A prior to revisions.

5 9. The Monitor, in mutual consultation with ESS staff, shall select qualified consultants
6 who shall provide training and technical assistance to all individuals who conduct investigations
7 and/or review of investigations per the complaint resolution procedures. The parties agree that
8 investigators must be competently trained in the following areas: federal and state disability law,
9 interviewing techniques, evidence collection, technical writing, and methods for tracking compliance
10 and corrective action by local educational agencies.

11 10. The Defendants shall submit quarterly reports to the Monitor. The reports will
12 address:

- 13 a. The number of complaints filed during the quarter;
- 14 b. A summary of the outcome of those complaints;
- 15 c. Documentation of the completion of the corrective action required pursuant
16 to the Letter of Findings; and
- 17 d. Copies of correspondence and/or documentation submitted to and from the
18 Review and Compensation Committee in pursuit or resolution of a claim for
19 compensatory education as outlined below in paragraphs 13-25 of this
20 agreement.
- 21 e. Reports will be due on the first business day following January 1, April 1,
22 July 1, and October 1 during the period of time the Consent Decree is in
23 force.
- 24 f. Copies of the reports shall be provided to Plaintiffs' counsel simultaneously
25 as they are transmitted to the Monitor.
- 26
- 27

1 16. Eligibility for individual compensation is limited to the following:

- 2 a. Complainants who lodged complaints against their local educational agencies
3 with the Arizona Department of Education, Exceptional Student Services,
4 between June 4, 1997 and the date of this Order, provided that:
- 5 b. The Arizona Department of Education found the local educational agency to
6 be in either partial or full non-compliance with state and federal laws relating
7 to the education of students with disabilities, and
- 8 c. The complainant was dissatisfied with the local educational agency's
9 response to the corrective action contained in the Letter of Findings.

10 17. Any claim for compensatory education or remedial action will be filed with the
11 Arizona Department of Education, Exceptional Student Services. The Department will refer all
12 claims to the Review and Compensation Committee within ten (10) days of receipt. The Committee
13 will consist of five individuals. The makeup of the Committee will be as follows: one parent of a
14 child with a disability, one special education director, one special education advisory committee
15 member, one representative of an advocacy organization (not to include the protection and advocacy
16 agencies or organization plaintiffs involved in this litigation), and one disability consumer. The
17 Defendants will cover all reasonable expenses associated with the operation of the Committee and
18 shall make space available for meetings.

19 18. The Arizona Department of Education, Exceptional Student Services shall designate
20 a contact person who shall be available to receive and address inquiries from the public and from the
21 Review and Compensation Committee. The Defendants shall make available the name of the contact
22 person to the Plaintiffs' counsel and the public within ten (10) days of the date of this Decree.

23 19. The members of the Review and Compensation Committee shall be appointed as
24 follows. The Plaintiffs, by and through counsel, will select the parent and advocacy representatives.
25 The Defendants, by and through counsel, will select the special education director and special
26 education advisory committee representatives. The parties shall jointly select the disability
27
28

1 consumer representative. In the event that the parties are unable to agree upon a person to serve as
2 the disability consumer representative, the Monitor shall make the final decision from among the
3 candidates proposed by the parties. The selections will be completed and the names and contact
4 information will be exchanged between the parties and provided to the designated representative
5 within thirty (30) days of the date of this Decree. The Defendants' designated representative will
6 make all necessary arrangements for the initial committee meeting and will serve as a liaison
7 between the Committee and the parties.

8 20. Following the introductory meeting, the Committee will thereafter establish its own
9 rules of operation including dates and times of meetings, agendas, and order of business. The
10 Committee shall meet from time to time but in no case less than 2 times per year.

11 21. In the event a Committee member resigns or is no longer able to serve, the appointing
12 party shall select a replacement member within 20 days of notification.

13 22. The Review and Compensation Committee will, by majority decision, make the final
14 determination regarding claims for compensatory education. The Committee has the collective
15 authority to seek additional information regarding a claim as the Committee deems necessary. The
16 Defendants shall ensure that the Committee is provided with all appropriate information or
17 documentation requested, to the extent that it is in Defendants' possession or otherwise available to
18 Defendants. The Defendants' designated representative will ensure that each Committee member
19 is provided a copy of the "IEP Team Determination of Compensatory Education" form (attached to
20 Exhibit A) to aid in the Committee's deliberations.

21 23. The local educational agency is responsible for providing and compensatory
22 education or other corrective action ordered by the Review and Compensation Committee.
23 Committee determinations will be enforced through the Arizona Department of Education through
24 use of all legal means available.

25 24. All claims for compensation pursuant to the terms of this Decree must be submitted
26 within eighteen (18) months of the date of this Decree or will be deemed waived.
27

25. All claims for compensation must be decided timely but in no case longer than six (6) months from the date the claim is received by the Committee.

E. Attorneys' Fees and Costs

26. The Defendants shall pay \$70,000 to Plaintiffs' counsel in full and complete satisfaction of Plaintiffs' claims for reimbursement of attorneys' fees and costs from the commencement of this Action until the time of final approval of this Decree. Payment is to be made within thirty (30) days of the final approval of this Consent Decree.

27. Class Plaintiffs shall have the right to move the Court for reimbursement of attorneys' fees incurred in the process of implementing the terms of this Decree or for any other work performed between the final approval of this Decree and the dismissal with prejudice of this Action against the Defendants.

28. Defendants reserve the right to oppose any motion of Plaintiffs' counsel for reimbursement of attorneys' fees and costs.

F. Notice to the Class

29. The parties have agreed upon a proposed form of notice to the class, which is attached hereto as Exhibit B. Pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, the Defendants shall, within thirty (30) days after the Court's approval of the "Notice of Proposed Settlement" distribute the attached notice to all local educational agencies with instructions to further distribute the notice to all parents/guardians of students with disabilities or students with suspected disabilities regardless of whether they are currently eligible for IDEA services. The Defendants shall further instruct the local educational agencies that they are to post the notice in a conspicuous location in school buildings where parents are likely to see the document. In addition, notice shall be sent to all ascertainable class members.

30. The notice shall inform class members regarding the terms of this Decree, the procedures contained in Exhibit A, class members' right to submit claims for compensatory education in accordance with paragraphs 13-25 of this Decree, and a hearing date obtained from the

1 Court at which time any objections as to the fairness of the settlement will be heard.

2 G. Release and Dismissal

3 31. It is agreed and understood by the parties that this Decree is a full and final settlement
4 of any and all claims against the Defendants based on, arising out of, or connected with the events
5 alleged in the Complaint filed on February 24, 1999.

6 32. It is agreed and understood that this Decree shall inure to the benefit of and shall be
7 binding upon the heirs, successors, and assigns of the parties.

8 33. This Decree does not invalidate previous agreements for the provision of
9 compensatory education or other services to individual class members.

10 34. Within ninety (90) days of the completion of the Monitor's eighteen (18) month term,
11 and provided neither side has requested an extension of the monitoring period, the Plaintiffs will
12 draft and file a Motion and Stipulation to Dismiss this matter with prejudice.

13 Dated: March 26, 2001

14
15
16 
17 ROBERT C. BROOMFIELD
18 United States District Judge
19
20
21
22
23
24
25
26
27
28